

New Filing Requirements & WC Medical Fraud

SB1160, AB1244

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Topics

Attorney Fees, Agreements, Declaration and
Application/Answer

Liens Include Bills

Lien Payments and Assignments

4903.05(c) Provider Declaration Form

Medical Fraud

Attorney Fees, Agreements, Declaration and Application / Answer



Attorney Fees 1/1/2017

No fees before file fee disclosure form.

4906(e) Fee disclosure form
signed by employee under penalty of
perjury
after advised of rights and
met or spoke personally with
attorney



Attorney Fees

4906(e) Fee disclosure form

form includes venue

filed within 15 days of execution.



Attorney Fee Agreements

**Attorney fees and fee agreements
must be approved or set by WCAB**

4906(a)

**Fee agreement form must be filed within
10 days of agreement.**

4906(c)



Attorney 4906(h) Declaration

Not offered or received any incentive to be referred for examination, evaluation or violate 139.3.

Signed by employee, employer, insurer and attorneys.

Filed with complete application and answer.



Complete Application / Answer

New 1/1/2017

4906(h)

Need a complete application and answer

Fill out the blanks

Must be signed



Liens Include Bills



Liens Include Bills

4903.05(a)

1/1/2017 file with all new liens:

**original bills supporting the lien,
statements or itemized vouchers and
proof of service on injured worker.**

No med records unless relevant.



Lien Payments and Assignments



Lien Payments and Assignments

**For 4903(b) liens: med treat and med legal
filed 1/1/2013 to 12/31/2016**

**Only order to pay original lien owner
unless out of business and made an
assignment**



**For 4903(b) liens: med treat and med legal
filed on or after 1/1/2017**

**Must file in the name of the original
owner**

Shall not assign

**unless original lien owner out of
business and made assignment**

**No payment without proof of
ownership**



Assignment must be filed and served

**Pre 1/1/2013 liens,
served by 1/1/2014, with DOR or at
conf.**

**On or after 1/1/2013 liens,
served earliest of lien filing or 20
days from assignment**



**Assignments require documentation and
declarations under penalty of perjury**

4903.8(d)

**If multiple assignments,
the matter may be set for a hearing to
determine if they constitute bad faith
sanctions, costs and attorneys fees
against assignee(s), assignor(s), and their
attorneys.**

4903.8(c)



Assignments

**4903(b) liens submitted on or after
1/1/3013**

that do not comply

shall be deemed invalid

4903.8(e)



Supplemental Lien Form and Section 4903.05(c) Declaration



Supplemental Lien Form and Section 4903.05(c) Declaration

**Liens filed on or after 1/1/2017
that pay a filing fee:
built into revised electronic lien**

**Liens filed 1/1/2013 - 12/31/2016
that paid a filing fee:
must file declaration by 7/1/2017.**



4903.05(c) Provider Declaration

Info: Rendering provider

Billing provider

License/Certification number

National Provider Identifier (NPI) No.



4903.05(c) Provider Declaration

**Certify that the lien is not subject to IMR,
not subject to IBR
and**

provider fits a category below: A-G

A. The treating physician within MPN

B. The AME or QME



provider fits a category A-G:

C. Er authorized treat under 4610 (UR)

**D. After diligent search Er does not
have an MPN**

**E. Documentation that med treatment
was neglected or unreasonably
refused**



provider fits a category A-G:

**F. Expense was for an emergency
medical condition per H&S 1317.1**

**G. Medical legal expense of
certified interpreter
copy service, or
lien expense allowed under regs**



4903.05(c) Provider Declaration

Failure to file signed declaration causes dismissal of lien with prejudice by operation of law.

Filing a false declaration causes dismissal with prejudice after notice.



Medical Fraud



What is criminal fraud?

- A material misrepresentation made for the purpose of gaining some advantage.
- AN INTENTIONAL LIE
 - Affirmative false statement
 - Omission (PC 550, 487)
- MADE TO GET SOMETHING TO WHICH THEY ARE NOT OTHERWISE ENTITLED.

What does it look like?

- Services not provided.
- Consistent upcoding.
- Consistent unbundling.
- Templated billing.
 - Same services, different patients
- Same Patients/Clients
- Volume exceeds capacity

Stages of a criminal case

- Report of suspected fraud
- Investigation by peace officers
- Filing of criminal charges
 - Complaint (felony or misdemeanor)
 - Information (felony post prelim)
 - Grand Jury Indictment
- Disposition
 - Plea or trial verdict
 - Imposition of Sentence

FIRST SIGNIFICANT STAGE:

Filing of criminal charges

When criminal healthcare fraud charges are filed against a workers' compensation (or Medi-Cal) provider, liens filed by the provider will be stayed.
[Labor Code 4615(a)].

- Source of information: DIR Database or Documentary Evidence: Complaint (felony or misdemeanor), Information (post preliminary hearing) or Grand Jury Indictment

SECOND SIGNIFICANT STAGE

CONVICTION

WHEN IS A DEFENDANT CONVICTED?

Good question!

Disposition by plea or trial verdict has
two parts: Plea and Sentence

**DEFENDANT IS CONVICTED WHEN
SENTENCE IS IMPOSED.**

*Caveat: Imposition of Sentence often occurs
LONG AFTER PLEA.*

SECOND SIGNIFICANT STAGE

Disposition by plea or trial verdict

- Source of information: DIR Database or Documentary Evidence: Minute Order from sentencing court will indicate charge, felony/misdemeanor, and consequences including any negotiated outcome regarding liens.
- CAVEAT: Prosecutors CANNOT exceed their authority in negotiating dispositions.

SIGNIFICANT STAGES

WHAT CRIMES QUALIFY?

Good Question!

Crime that involves fraud or abuse of the program or any patient, or is a financial crime relating to the system or substantially related to the qualifications, functions or duties of a provider

Medical Fraud

**Provider criminally charged →
WC lien stay**

**Provider conviction →
WC suspension →
Special Adjudication Unit Hearing**



Provider crim charged → WC lien stay

If provider is criminally charged with

Fraud against workers' comp,

Medical billing fraud,

Insurance fraud, or

Medicare or Medi-Cal fraud,

**Then liens filed by or behalf of med treat
or med- legal provider are automatically
stayed until disposition of criminal action**



Provider crim charged → WC lien stay

**Names of criminally charged providers
are posted on DIR website, Fraud
Prevention page 4615(b)**

**Stayed liens are posted as the results of
the Lien Search portion of the DWC
Public Information Search Tool**



Provider conviction → WC suspension

139.21(a)

IF provider

**A. Fraud or abuse caused suspension
from Medicare or Medicaid,**

**B. Provider surrendered or revoked
license to provide health care
or**



Provider conviction → WC suspension

C. Provider convicted of felony or
misdemeanor involving:

Fraud, abuse or a financial crime of
Medicare, Medi-Cal or workers' comp

Patient care in medical practice

Qualifications, functions or duties of
provider



Provider conviction → WC suspension

Then AD shall suspend

provider or entity

from participating in workers' comp

139.21(a)



Provider conviction → WC suspension

**AD provides notice of suspension and
right to a hearing to provider**

Effective in 30 days if no hearing.

Provider has 10 days to request hearing.

Suspension stayed if hearing requested.

Hearing held within 30 days of request.



Provider conviction → WC suspension

After hearing AD has

10 days to adopt or modify
the WCJs Determination and Order re
Suspension.

Appeal is to Superior Court.

LC 139.21(a), 8 CCR 9788.1-.4



Suspended from Participation:

**Dr., practitioner, provider or QME
is prohibited from seeking
pay/reimbursement directly/indirectly
for goods/services related to injury
on or after date of suspension**

8 CCR 9788.1(a)



Provider conviction → WC suspend

Upon suspension:

**AD notifies Chief Judge
who will notify the district offices and
post the change of provider status
on the website**

139.21(d)



Provider conviction → WC suspend → SAU

Criminal proceeding disposition: If it specifies dismissal of liens, liens are deemed dismissed with prejudice by operation of law. WCJ orders are effective as of date of criminal dispo.

If liens are not addressed, pending liens will be consolidated and adjudicated in a DWC special lien proceeding.



Provider conviction → WC suspend → SAU

AD appoints a special lien proceeding attorney to identify the liens in ADJ cases related to charged provider and notify Chief Judge.

Chief Judge shall identify a district office and appoint a WCJ to preside over that proceeding.

139.21(f)



Special Adjudication Unit Lien Hearings

Presumption affecting burden of proof:

The liens and underlying bills arise from the conduct of the provider that caused the suspension.

No payment is due the lien claimant unless they rebut the presumption by a preponderance of evidence.

139.21(g)



Provider conviction → WC suspend → SAU Special Adjudication Unit Lien Hearings

If rebutted the WCJ has discretion to adjudicate lien or transfer it to a district office with venue. 139.21(i)

Lien Claimant may elect to withdraw liens or dismiss liens with prejudice. 139.21(j)



Thank You

